

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

RAUL GONSALVES,  
Petitioner,

v.

MICHAEL THOMPSON,  
Respondent.

Civil Action No.05-10619-RCL

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U.S. DISTRICT COURT  
MASSACHUSETTS

PETITIONER'S REPLY TO RESPONDENT'S  
MOTION TO DISMISS AND ANSWER

The petitioner, Raul Gonsalves, respectfully moves this court to deny respondent's motion to dismiss the above-captioned petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, on the basis that federal habeas review is available if "the prisoner can demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that the failure to consider the claim will result in a fundamental miscarriage of justice". Coleman v. Thompson, 501 U.S. 722, 750, 111 S.Ct. 2546, 2565 (1991); Gunter v. Maloney, 291 F.3d 74, 78 (1st Cir. 2002). Even if this court concludes that the petitioner's petition is a mixed petition which contains both exhausted and unexhausted claims, the court has discretion to review a petition on the merits where "it is in the interest of judicial efficiency to consider the merits of the exhausted claims instead of requiring petitioner to refile the petition listing only the exhausted claims". Cravalho v. Maine, 300 F.Supp. 2d 189, 195 (D.Me. 2004). The petitioner also relies on the accompanying memorandum of law in support of petitioner's reply to respondent's motion to dismiss.

Wherefore, the petitioner requests that this honorable court deny the respondent's motion to dismiss.

Respectfully Submitted,

Raul Gonsalves

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Dated: June 28, 2005